

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2976 OF 2022

KRP Infrastructures & Builders Pvt. Ltd., & Anr. ...Petitioners
Versus
Sandeep Sanghvi & Anr. ...Respondents

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Mr. Saurabh Bhutala, Advocate for the Petitioner.

Mr. Mandar Soman for Respondent No.1.

Mr. S. R. Agarkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 22nd AUGUST, 2022

PC :

1. Leave to amend to add prayer clause for setting aside the order forfeiting bail bond. Amendment be carried out forthwith.

2. The petitioners are prosecuted for an offence punishable under Section 138 of the Negotiable Instruments Act. The complaint was initiated by respondent No.1 before the Court of learned Metropolitan Magistrate 43rd Court at Borivali, Mumbai. The complaint was filed on 04.10.2018 and process was issued on 03.12.2018.

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3. The petitioners had initially appeared before the trial Court through their advocate. The evidence of the complainant is adduced. The cross-examination was partly conducted. Thereafter, for a long period of time, petitioners and their advocate did not appear before the trial Court which has resulted in passing multiple orders which are under challenge in this petition. In the past, non-bailable warrant issued against petitioner No.2 and he was in custody since 22.11.2019 and subsequently he was released on bail. Thereafter, non-bailable warrants were issued against respondent No.2 on 21.12.2021, 14.02.2022 and 01.04.2022. On the same day, proclamation was issued against the petitioners. Learned Magistrate has also proceeded to close the cross-examination of the defence and dispensed with the statement of the accused under Section 313 of Cr.P.C. The proceedings are now listed for final arguments. The next date before the trial Court is on 06.10.2022.

4. Learned advocate for the petitioners submits that petitioner No.2 is resident of Lucknow. He was represented by the Advocate before the trial Court. However, on account of pandemic and miscommunication with their advocate,

the petitioner No.2 did not appear before the trial Court. The petitioners would file an undertaking before this Court stating that in the event the impugned orders are set aside, the petitioner No.2 would regularly appear before the Court either in person or through his advocate.

5. Learned advocate for respondent No.1 submitted that there is no infirmity in the orders passed by trial Court. Sufficient opportunity was given to the petitioners for appearing in the proceedings. The petitioner No.2 did not appear. Even the advocate representing the petitioner did not appear before the trial Court. Cross examination was not completed. Despite opportunity being given to petitioner No.2, the petitioners neglected the proceedings. The Court had no other alternative but to issue non-bailable warrants and proclamation and also to pass order closing the cross-examination and dispensing with recording of statement under Section 313 of Cr.P.C. In the event, the Court permit to petitioners to proceed with the matter, they may be directed to deposit 50% of the cheque amount before the Trial Court.

6. It is true that the proceedings are pending before the trial Court since 2018. It is also apparent that the petitioner

No.2 as well as advocate for respondent No.2 remained absent before the trial Court. Non-bailable warrant was required to be issued against them repeatedly and Court was constrained to issue proclamation. However, since the petitioners now intend to proceed with the matter and to meet ends of justice on certain conditions, the impugned orders can be set aside.

ORDER

(i) Criminal Writ Petition No. 2976 of 2022 is allowed and disposed of.

(ii) Impugned orders dated 21.12.2021, 14.02.2022 and 01.04.2022 issuing non-bailable warrant passed by learned Metropolitan Magistrate 43rd Court Borivali Mumbai, order dated 01.04.2022 issuing proclamation, order dated 01.04.2022 forfeiting bail bond and order dated 17.05.2022 closing the cross-examination and dispensing with the statement of accused under Section 313 of Cr.P.C. are quashed and set aside.

(iii) The petitioners shall file an undertaking before this Court that the proceedings will be attended by them before the trial Court regularly either in person or through their advocate and no adjournment will be sought by them and that the amount of Rs.10,00,000/- will be deposited before

the trial Court on or before 06.10.2022 which will be considered as in the deposit proceedings.

(iv) The trial is expedited.

(v) The trial Court is requested to complete the trial within a period of six months from the date of receipt of this order.

(PRAKASH D. NAIK, J.)